

RECORDED AT REQUEST
OF CAL LAND TITLE

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RECORDING REQUESTED BY: <u>United States Army</u> <u>Chief, Management & Disposal Branch</u> <u>Real Estate Division</u> <u>Sacramento District</u> <u>1325 J Street</u> <u>Sacramento, CA 95814-2922</u>	This document recorded: <u>10/1/03</u> Series Number: <u>2003-121423</u> In <u>MARIN</u> County We hereby certify that the within copy is a true and correct copy of the original. <u>[Signature]</u>
WHEN RECORDED, MAIL TO: <u>Department of Toxic Substances Control</u> <u>Northern California Region</u> <u>8800 Cal Center Drive</u> <u>Sacramento, California 95827</u> <u>Attention: Anthony J. Landis, P.E., Chief</u> <u>Northern California Operations,</u> <u>Office of Military Facilities</u>	
<u>California Regional Water Quality Control Board, San Francisco Bay Region</u> <u>1515 Clay Street, Suite 1500, Oakland, CA</u> <u>94612 Attention: Executive Officer</u>	California Land Title of Marin
<u>United States Army</u> <u>Chief, Management & Disposal Branch</u> <u>Real Estate Division</u> <u>Sacramento District</u> <u>1325 J Street</u> <u>Sacramento, CA 95814-2922</u>	

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Hamilton Army Airfield, Main Base Parcel, Department of the Army)

This Covenant and Agreement ("Covenant") is made by and between the United States of America acting by and through the Department of the Army ("DOA" or "Covenantor"), the current owner of property situated in Novato, County of Marin, State of California, described in Exhibit A, which is attached and incorporated here by this reference ("Property"), and the State of California ("State") acting by and through the Department of Toxic Substances Control ("Department") and the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"). The State has determined that this Covenant is reasonably necessary to protect present or future human health or

safety or the environment as a result of the presence on the land of hazardous materials, as defined in California Health & Safety Code ("H&SC") Section 25260, and enters into this Covenant in accordance with H&SC Section 25355.5 and California Civil Code Section 1471.

In addition, pursuant to Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Section 104 (42 U.S.C. §9604), as delegated to the Covenantor by Executive Order 12580, ratified by Congress in 10 U.S.C. Section 2701, et seq., and implemented by the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") 40 C.F.R. Part 300, and implementing guidance and policies, the Covenantor has also determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as the result of the presence on the land of hazardous substances as defined in CERCLA Section 101 (42 U.S.C. §9601).

The Covenantor and the State (collectively, the "Parties") therefore intend that the use of the Property be restricted as set forth in this Covenant to protect human health, safety and the environment. It is anticipated that all of the Restrictions in this Covenant will remain in effect in perpetuity.

I. STATEMENT OF FACTS

1.01. The Property, totaling approximately 630 acres, is more particularly described and depicted in Exhibit A. The Property is located in the area now generally bounded by Unit 5 of Bel Marin Keys, the North Antenna Field (formerly part of Hamilton Army Airfield), San Pablo Bay, Saint Vincent de Paul farm land, property of the US Department of the Navy, residential property, City of Novato Property, and Ignacio Reservoir, in the County of Marin, State of California.

1.02. The Army, Department and the Regional Board have each signed the Record of Decision/Remedial Action Plan ("ROD/RAP"), dated September 12, 2003, setting forth the actions and activities necessary to render the property suitable for its intended reuse of open space for wildlife habitat restoration and wetland restoration use. The Regional Board has issued Site Cleanup Requirements pursuant to the Porter Cologne Water Quality Control Act requiring the Army to complete the activities described in the ROD/RAP, including operation and maintenance of the remedial actions, in accordance with a schedule agreed upon by the Army. The ROD/RAP proposes environmental actions and environmental assurances for residual contaminants identified at the Property both in specific locations and area-wide. The actions described in the ROD/RAP include excavation and offsite disposal, and management of contaminants onsite under three feet of stable cover or an appropriate alternative action providing an equivalent level of protection, as approved by the Regional Board. The Property is composed of two main areas; the Inboard Area, with 62 sites; and the Coastal Salt Marsh Area, with 10 sites. Of the 72 sites, 19 sites

are considered No Further Action; 17 sites will be excavated and disposed off-site; and 36 sites will be either excavated and disposed off-site or managed in-situ, with monitoring and maintenance plans.

1.03. The DOA has issued a Finding of Suitability for Early Transfer ("FOSET") dated August 20, 2003, to transfer the Property prior to completion of the work required in the ROD/RAP. This type of transfer is subject to Section 120(h)(3)(C) of CERCLA, and is contingent upon a determination by the Governor of the State that the Property is suitable for transfer. Specifically, Section 120(h)(3)(C)(i)(II) requires that the deed or other agreement governing the transfer contain assurances, among other things, that provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment.

1.04. As described in the ROD/RAP, area wide soils at the Property contain residual dichlorodiphenyltrichloroethane (DDT) and its breakdown products DDE and DDD (collectively, "DDTs"). Additionally, soils at specific locations within the Property contain residual concentrations of some of the following constituents: DDTs, polynuclear aromatic hydrocarbons (PAHs), metals, polychlorinated biphenyls, dioxin, total petroleum hydrocarbons, and semi-volatile organic compounds. Although a portion of the soils with residual contaminants will be removed during remediation activities, some residual contaminants in the soils will remain on-site above action goals. Soils containing residual DDT and PAHs contaminants above action goals will be managed on-site through achieving and maintaining a performance criteria of three feet of stable cover, or an appropriate alternate action providing an equivalent level of protection as approved by the Regional Board.

1.05. DDTs have been found at concentrations above 1.0 mg/kg in the Inboard Area and Coastal Salt Marsh. Soils containing DDTs less than 0.030 mg/kg are deemed to present no risk to wetland receptors, and can be used on-site without restriction. The ROD/RAP provides for DDTs at concentrations greater than 1.0 mg/kg to be excavated and disposed off-site of the Property. For the inboard area, soils containing DDTs between 0.030 mg/kg and 1.0 mg/kg will be managed on-site as described in section 1.04.

II. DEFINITIONS

2.01. State. "State" means the State of California by and through the Department of Toxic Substances Control and the California Regional Water Quality Control Board, San Francisco Bay Region, and includes their successor agencies, if any. Prior to transfer, the Department will act as lead agency on behalf of the State with respect to the exercise of all powers and duties designated in this Covenant as within the discretion or the responsibility of the State, and the Regional Board will act in a consultative capacity to the Department. Upon transfer and thereafter, the Regional Board will act as lead agency on behalf of the State with respect to all powers and duties designated in

this covenant as within the discretion or the responsibility of the State, and the Department will act in a consultative capacity to the Regional Board.

2.02. Owner. "Owner" means the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.03. Occupant. "Occupant" shall mean owners and any person or entity entitled by leasehold, license, easement, servitude, agreement or other legal relationship to the right to enter and possess, occupy or improve any portion of the Property.

2.04. Covenantor. "Covenantor" shall mean the United States acting through the Department of the Army.

III. GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land in perpetuity pursuant to H&SC Section 25355.5(a)(1)(C) and Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) shall apply to and bind all subsequent Occupants of the Property; (d) is for the benefit of, and is enforceable by the State; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners and Occupants. Pursuant to H&SC Section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code Section 1471(b), all successive owners of the Property, and each person having any interest therein derived through any owner thereof, are expressly bound hereby for the benefit of the State.

3.03. Written Notification. Upon a determination that a hazardous substance is present upon or beneath nonresidential real property, a notification must be made pursuant to H&SC Section 25359.7. Specifically, prior to the sale or lease of nonresidential real property, the owner or lessor shall give the buyer or lessee notice that a hazardous substance is located on or beneath the Property.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, licenses, access

agreements and leases for any portion of the Property to which they are in effect and applicable.

3.05. Conveyance of Property. The Owner shall provide notice to the State not later than thirty (30) days prior to any conveyance of any ownership, occupancy, access rights, easement or possessory interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The State shall not, by reason of this Covenant alone, have authority to approve, disapprove, or otherwise affect a conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

IV. RESTRICTIONS

4.01. Restrictions. The following Restrictions on use of the Property shall apply as provided below:

4.01.01 Grading, excavation, and intrusive activities may not be conducted except in accordance with a plan approved by the State.

4.01.02 The property shall not be used for residences, schools, daycare facilities, hospitals, hospices, or similar sensitive uses.

4.02. Access for State. Covenantor, State, and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice, to enter the property when it is necessary to carry out response actions or other activities consistent with the purposes of the ROD/RAP, including work to be carried out on adjoining parcels. Such entry and authorized activities shall be carried out in a manner that minimizes interference with wildlife habitat and the implementation, operation or maintenance of ecosystem restoration activities on the property, to the extent feasible.

V. ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the State, by reason of this Covenant, to require that the Owner modify or remove any improvements constructed in violation of this Covenant. Violation of this Covenant shall be grounds for the State to file civil or criminal actions as provided by law.

VI. VARIANCE, TERMINATION AND TERM

6.01. Variance. The Owner, or with the Owner's consent, any Occupant, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25233.

6.02. Termination. The Owner, or with the Owner's consent, any Occupant, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234.

6.03. Term. Unless ended or modified in accordance with the paragraphs above, by law, or by the State in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

VII. MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Recordation. The Covenantor shall record this Covenant, with Exhibits, in the County of Marin within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any notice ("notice" as used here includes any demand or other communication with respect to this Covenant), each such notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To the Current

Owner of Record: United States Army Forces Command
Base Realignment and Closure Office
Hamilton Army Airfield
1 Burma Rd, Novato, CA 94949
Attention: Edward Keller

United States Army Atlanta Field Office
1347 Thorne Ave. SW
Bldg 243
Ft. McPherson, GA 30330-1062
Attention: Chief, Atlanta Field Office

To Regional Board: California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA, 94612
Attention: Executive Officer

To Department: Department of Toxic Substances Control
Northern California Region
8800 Cal Center Drive
Sacramento, California 95826
Attention: Chief
Northern California Operations
Office of Military Facilities

Any notice or application to the State under this agreement shall be provided to both the Department of Toxic Substances Control and the Regional Board. Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.05. Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.06. Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.07. Representative Authority. The 'undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.08. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.
Covenantor:

United States Army

By: 

Name: Joseph W. Whitaker

Title: Deputy Assistant Secretary of the Army
(Installations and Housing)
OASA (I&E)

Date: 9/29/03

Department of Toxic Substances Control

By: 

Name: ~~Anthony J. Landis~~ DOROTHY RICO

Title: Chief, Northern California Operations
Office of Military Facilities

Date: 9/29/03

California Regional Water Quality Control Board, San Francisco Bay Region

By: 

Name: Loretta Barsamian

Title: Executive Officer

Date: 9/29/03

Commonwealth of Virginia

COUNTY OF Arlington

On this 29th day of September, in the year 2003, before me Donald R. Manuel, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Karen A. Cooper
Signature
KAREN A. COOPER

MY Commission Expires November 30, 2006

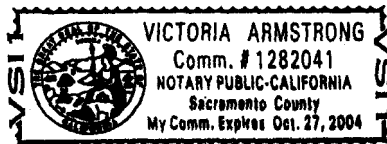
STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

On this 26th day of SEPTEMBER, in the year 2003, before ~~personally known to me~~ (or proved to me on the basis of, personally appeared, satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Victoria Armstrong



STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

On this 29th day of SEPTEMBER, in the year 2003, before me LORETTA H. BARSAMIAN, personally appeared, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are Subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that ~~by his/her/their~~ signature(s) on the instrument the person(s), or the entity upon ~~be~~ half of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Victoria Armstrong

